

Department of the Navy, DoD

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section, such supervisory attorneys have no readily available standard against which to compare allegedly questionable conduct of a civilian attorney.

§ 776.25 Confidentiality of information.

(a) *Confidentiality of information:* (1) A covered attorney shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraphs (a)(2) and (a)(3) of this section.

(2) A covered attorney shall reveal such information to the extent the covered attorney reasonably believes necessary to prevent the client from committing a criminal act that the covered attorney believes is likely to result in imminent death or substantial bodily harm, or significant impairment of national security or the readiness or capability of a military unit, vessel, aircraft, or weapon system.

(3) A covered attorney may reveal such information to the extent the covered attorney reasonably believes necessary to establish a claim or defense on behalf of the covered attorney in a controversy between the covered attorney and the client, to establish a defense to a criminal charge or civil claim against the attorney based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the attorney's representation of the client.

(b) Conduct likely to result in the significant impairment of national security or the readiness or capability of a military unit, vessel, aircraft, or weapon system include, but are not limited to: Divulging the classified location of a special operations unit such that the lives of members of the unit are placed in immediate danger; sabotaging a vessel or aircraft to the extent that the vessel or aircraft could not conduct an assigned mission, or that the vessel or aircraft and crew could be lost; and compromising the security of a weapons site such that the weapons are likely to be stolen or detonated. Paragraph (a)(2) of this section is not intended to and does not mandate the disclosure of conduct which may have a

slight impact on the readiness or capability of a unit, vessel, aircraft, or weapon system. Examples of such conduct are: absence without authority from a peacetime training exercise; intentional damage to an individually assigned weapon; and intentional minor damage to military property.

§ 776.26 Conflict of interest: General rule.

(a) *Conflict of interest: General rule:* (1) A covered attorney shall not represent a client if the representation of that client will be directly adverse to another client, unless:

(i) The covered attorney reasonably believes the representation will not adversely affect the relationship with the other client; and

(ii) Each client consents after consultation.

(2) A covered attorney shall not represent a client if the representation of that client may be materially limited by the covered attorney's responsibilities to another client or to a third person, or by the covered attorney's own interests, unless:

(i) The covered attorney reasonably believes the representation will not be adversely affected; and

(ii) The client consents after consultation.

(3) When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

(b) *Reserve judge advocates.* These conflict of interest rules only apply when Reservists are actually drilling or on active-duty for training, or, as is the case with Retirees, on extended active-duty or when performing other duties subject to JAG supervision. Therefore, unless otherwise prohibited by criminal conflict of interest statutes, Reserve or Retired attorneys providing legal services in their civilian capacity may represent clients, or work in firms whose attorneys represent clients, with interests adverse to the United States. Reserve judge advocates who, in their civilian capacities, represent persons whose interests are adverse to the DON will provide written notification to

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their supervisory attorney and commanding officer, detailing their involvement in the matter. Reserve judge advocates shall refrain from undertaking any official action or representation of the DON with respect to any particular matter in which they are providing representation or services to other clients.

§ 776.27 Conflict of interests: Prohibited transactions.

(a) *Conflict of interests: Prohibited transactions.* (1) Covered USG attorneys shall strictly adhere to current Department of Defense Ethics Regulations and shall not:

(i) Knowingly enter into any business transactions on behalf of, or adverse to, a client's interest which directly or indirectly relate to or result from the attorney-client relationship; or

(ii) Provide any financial assistance to a client or otherwise serve in a financial or proprietary fiduciary or bailment relationship, unless otherwise specifically authorized by competent authority.

(2) No covered attorney shall:

(i) Use information relating to representation of a client to the disadvantage of the client unless the client consents after consultation, except as permitted or required by § 776.25 or § 776.42 of this part;

(ii) Prepare an instrument giving the covered attorney or a person related to the covered attorney as parent, child, sibling, or spouse any gift from a client, including a testamentary gift, except where the client is related to the donee;

(iii) In the case of covered non-USG attorneys, accept compensation for representing a client from one other than the client unless the client consents after consultation, there is no interference with the covered attorney's independence of professional judgment or with the attorney-client relationship, and information relating to representation of a client is protected as required by § 776.25 of this part;

(iv) Negotiate any settlement on behalf of multiple clients in a single matter unless each client provides fully informed consent;

(v) Prior to the conclusion of representation of the client, make or ne-

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gotiate an agreement giving a covered attorney literary or media rights for a portrayal or account based in substantial part on information relating to representation of a client;

(vi) Represent a client in a matter directly adverse to a person whom the covered attorney knows is represented by another attorney who is related as parent, child, sibling, or spouse to the covered attorney, except upon consent by the client after consultation regarding the relationship; or

(vii) Acquire a proprietary interest in the cause of action or subject matter of litigation the covered attorney is conducting for a client.

(b) [Reserved]

§ 776.28 Conflict of interest: Former client.

(a) *Conflict of interest: Former client.* A covered attorney who has represented a client in a matter shall not thereafter:

(1) Represent another person in the same or a substantially related matter in which the person's interests are materially adverse to the interests of the former client, unless the former client consents after consultation;

(2) Use information relating to the representation to the disadvantage of the former client or to the covered attorney's own advantage, except as § 776.25 or § 776.42 of this part would permit or require with respect to a client or when the information has become generally known; or

(3) Reveal information relating to the representation except as § 776.25 or § 776.42 of this part would permit or require with respect to a client.

(b) [Reserved]

§ 776.29 Imputed disqualification: General rule.

(a) *Imputed disqualification: General rule.* Covered USG attorneys working in the same military law office are not automatically disqualified from representing a client because any of them practicing alone would be prohibited from doing so by § 776.26, § 776.27, § 776.28, or § 776.38 of this part. Covered non-USG attorneys must consult their federal, state, and local bar rules governing the representation of multiple